

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

September 25, 2003

ORDER APPROVING  
STIPULATION (PART TWO)

MAINE PUBLIC SERVICE COMPANY  
Request for Approval of Alternative Rate Plan

Docket No. 2003-85

MAINE PUBLIC SERVICE COMPANY  
Application for Approval of Issuance of  
Second Mortgage and Collateral Trust Bonds  
to Secure New Letter of Credit Issued  
Pursuant to Amendment No. 4 to the Letter  
of Credit and Reimbursement Agreement  
(Section 1101) (\$14,400,000)

Docket No. 2002-256

MAINE PUBLIC SERVICE COMPANY  
Application for Approval of Issue of Securities  
(Section 902) (\$15,000,000) and for Approval  
of Second Mortgage (Section 1101)  
(\$15,875,000)

Docket No. 1996-241

MAINE PUBLIC SERVICE COMPANY  
Application for Approval of Issue of Securities  
(Section 902) (\$9,525,000)

Docket No. 2000-542

MAINE PUBLIC SERVICE COMPANY  
Application for Approval of Issuance of  
Securities and Mortgage Bonds (Section 902,  
1101) (\$14,000,000)

Docket No. 1998-210

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WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

On September 3, 2003, we issued our Part One Order in the above-referenced dockets which approved a Stipulation entered into between Maine Public Service Company (MPS or Company), the Office of the Public Advocate (OPA), McCain Foods, Inc. (McCain), and J.M. Huber, Inc. (Huber) and thus authorized MPS to increase its rates by an amount sufficient to produce an increase in distribution revenues of not more than \$940,000 and to enter a "Hedge Program" which would serve to fix the Company's long-term debt rate which is currently variable. In order to allow MPS to take advantage of current market conditions as early as possible, pursuant to our authority under section 1003, Chapter 110 of the Commission's Rules of Practice and Procedure, we decided to issue our Order Approving Stipulation in two parts. This Part

Two Order contains the full findings and reasons in support of the Commission's decision to approve the Stipulation.

## II. BACKGROUND

On March 6, 2003, Maine Public Service Company (MPS or Company) filed a request for Approval of an Alternative Rate Plan (ARP) for implementation beginning on July 1, 2003 and which would then run for seven years. At the outset of the plan, MPS's distribution rates would be increased by 8.9% and then annually by the rate of inflation during the first three years of the plan. A productivity analysis would be conducted at the end of the third year of the plan to determine if a productivity offset was necessary for years 4 through 7. In addition, rates would be adjusted for extraordinary costs, changes in variable interest rates, pursuant to an "economic conditions adjustment factor", for earnings sharing outside a "dead-band", for pricing flexibility lost revenues, and pursuant to a reliability safety and service quality index.

On March 10, 2003, the Commission issued a Notice of Proceeding which provided interested persons with an opportunity to intervene in this matter. A timely petition to intervene was filed prior to the conference by the Office of the Public Advocate (OPA). At the case conference, J.M. Huber, Inc., a customer of MPS, orally petitioned to intervene. J.M. Huber, Inc. formally submitted a late-filed petition to intervene on March 27, 2003. On April 16, 2003, McCain Foods, Inc. filed a petition to intervene. Petitions for limited intervention status for the purpose of receiving all filings, as well as possibly filing a brief on policy issues, were filed by the Industrial Energy Consumers Group (IECG) and by Central Maine Power Company (CMP). The petitions of the OPA, J.M. Huber, Inc., McCain Foods, Inc., the IECG and CMP were all granted without objection.<sup>1</sup>

In order to ensure that MPS's rates were just and reasonable at the start of any ARP which might be approved in this case, the Hearing Examiner, in a Procedural Order dated April 2, 2003, ordered the Company to submit a "Chapter 120" cost of service filing by April 10, 2003. On April 11, 2003, the Company submitted its Chapter 120 filing based on a 2002 test year, adjusted for known and measurable changes. In its filing, the Company alleged that it was entitled to a rate increase of \$1.713 million under traditional cost of service principles. However, the Company stated that it would not change its initial request for a \$1.267 million increase.

The Company's customers were provided with notice of the Company's request to increase rates and were provided with an opportunity to comment or provide testimony at a public witness hearing on May 9, 2003. No member of the public testified at such time.

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<sup>1</sup> McCain's petition to intervene was orally granted by the Hearing Examiner in this matter.

Following the submittal of the Company's Chapter 120 filing, the OPA and our Advisory Staff conducted extensive discovery on the MPS Company's filing both by way of written data requests and at a number of informal technical conferences. Based on the information provided, the parties and our Advisory Staff held a number of settlement conferences.

On September 2, 2003, we received a Stipulation entered into between MPS, the OPA, McCain and Huber. The Stipulation proposes to bifurcate the case into two phases. The issues classified as Phase I issues, are settled pursuant to the terms of the Stipulation and will be finally resolved upon the Company's execution of its Hedge Program. Phase II of the case, which includes the Company's ARP proposal, may be addressed at a later time by the Commission.

### III. DESCRIPTION OF THE STIPULATION

#### A. Phase I Issues

##### 1. Revenue Requirement

MPS is authorized to increase its rates on file with the Commission by an amount sufficient to produce an increase in its distribution revenues of not more than \$940,000, of which \$306,827 is associated with the cost of the Hedge Program, for a total distribution revenue requirement of \$16,068,714. These amounts shall be subject to adjustment when the cost of the Hedge Program has been established. The agreed-upon distribution revenue requirement is predicated upon a 2002 actual test year with various pro-forma adjustments and an allowed return on common equity of 10.25%.

##### 2. Hedge Program

As described in our Part One Order, currently all of the Company's long-term debt instruments contain variable interest rates. MPS is prepared to enter into "swaps" to fix the interest costs on all of its long-term debt through the maturity of each series of debt. The interest rates paid to the existing debt-holders will, therefore, continue to vary over time with market conditions. In separate swap transactions, however, the Company will pay one or more counterparties the difference between the variable interest rate (the "Actual Rate") and the agreed-upon swap rate (the "Swap Rate") for so long as the Actual Rate is less than the Swap Rate for any series of debt. If the Actual Rate exceeds the Swap Rate for any series of debt, the counterparty pays MPS the difference. Thus, the net economic effect of keeping the existing arrangements with its debt-holders in place, while implementing the Hedge Program, is to allow MPS to fix the interest rates on its debt for the balance of the maturity of each series of debt.

Since the prices of these instruments change on an hour-by-hour basis, the exact cost of the Program will not become known until the Company has

purchased the swaps that comprise the Program. Accordingly, the parties agreed that upon the issuance of a Commission Order accepting the Stipulation, the Company may implement the Hedge Program by purchasing the swaps up to an amount that the total distribution revenue requirement increase does not exceed \$1,050,000. The Company would then make a supplemental filing in this docket documenting the actual interest rates achieved by the Hedge Program.

3. Unbundling of Rates and Rate Design

In order to implement the Company's distribution only rate change in this case, and possible ARP price changes in the future, the parties and the Commission's Advisory Staff recognized that the Company's current bundled delivery rates needed to be separated into discrete distribution and stranded cost components. The parties have agreed to both a distribution and stranded cost class revenue allocation. The rates for special rate contract customers McCain and Huber, and for other members of the Company's H-T rate class, shall be based on the rates developed as part of the cases approving the McCain and Huber special rate contracts. See *Maine Public Service Company, Special Rate Contract for McCain Foods, Inc.*, Docket No. 2000-241 and *Maine Public Service Company, Request for Approval of Special Rate Contract with J.M. Huber, Inc.*, Docket No. 2000-447.

In the compliance phase of this proceeding, MPS shall submit both distribution rates and stranded cost rates based on these class revenue allocations. These rates shall serve as the starting point rates to implement the agreed to price-change and for the Company's next stranded cost proceeding. The distribution price change agreed to in this case shall be implemented by utilizing an "across the board" methodology.

4. Conservation Fund Assessment and Recovery

Under the Stipulation, MPS would be authorized, pursuant to an accounting order entered by the Commission, to defer for future recovery in rates the difference between the amount included in rates in this case for the conservation fund, \$318,168, and actual amounts assessed for the conservation fund ("the Assessment Increase"). The mechanism for recovery of these amounts would be resolved in Phase II of this docket. However, if the docket is discontinued without a resolution of the Phase II issues, then the Company would be permitted to adjust its rates during the second half of 2004 to reflect the 2004 Assessment Increase, and may make a separate application to the Commission to establish a permanent procedure for the recovery of the Assessment Increases, thereafter.

5. Accounting Orders

As part of the agreed-upon revenue requirement, the parties have included annual amounts for the Special Revenue Discount Offset and for the Sales Forecast Adjustment ordered in Docket No. 2001-240. Therefore, the parties propose

that MPS no longer be required to accrue additional deferrals for these items. The prior deferral of these costs shall be amortized over a period of two years. In addition, MPS shall be authorized, pursuant to an accounting order to be entered by the Commission, to amortize over a period of seven years costs associated with the Company's Voluntary Early Retirement Program (VERP) as well as the costs incurred in connection with this docket.

B. Phase II Issues

Should the Commission accept the Stipulation, and if the Company thereafter executes the Hedge Program, all issues in Phase I of this docket will be deemed to have been resolved. The Company has indicated that it may or may not proceed with the ARP portion of the MPS proposal (Phase II). MPS will notify the Commission and the parties in writing, no later than December 31, 2003, whether it wishes to proceed with Phase II. If MPS does elect to proceed, then the Examiner in this case shall consult with the parties and establish a schedule for processing Phase II. If MPS elects not to proceed, then this docket shall be closed.

#### IV. FINDINGS AND CONCLUSIONS

As we have now stated on many occasions, to accept a stipulation the Commission must find:

1. the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
2. the process that led to the stipulation was fair to all parties; and
3. the stipulated result is reasonable and is not contrary to legislative mandates.

*See Central Maine Power Company, Proposed Increase in Rates*, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design)*, Docket No. 95-052, Order (Me. P.U.C. June 26, 1996).

We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the proposed Stipulation in this case meets these criteria.

The Stipulation before us was entered between MPS, the OPA, McCain and Huber. We also note that the Stipulation is also supported by our Advisory Staff in this case. These entities, with divergent and often opposing views in this regulatory context,

constitute a sufficiently broad spectrum of interests to satisfy the first criterion. See *Public Utilities Commission, Investigation of stranded Cost Recovery, Transmission and Distribution Utility Revenue Requirements and Rate Design of Bangor Hydro-Electric Company (Phase II)*, Docket No. 99-185, Order Approving Stipulation (Maine Public Service Company) at 3 (Aug. 11, 2000).

We also believe that the process that led to the Stipulation here was fair to all parties. In finding so, we note that the parties were able to resolve the issues presented in the Stipulation through an informal collaborative process similar to that recently successfully employed in *Bangor Hydro-Electric Company, Request for Approval of alternative Rate Plan*, Docket No. 2001-410, *Bangor Hydro-Electric Company, Proposed Rate Change to Increase Annual Revenues Approximately \$6.4 Million*, Docket No. 2001-728, Order Approving Stipulation (June 11, 2002). Although the process was informal, the parties and our Advisory Staff were provided with a full opportunity to request information, both through formal and informal discovery, on the Company's Chapter 120 filing and that the Company was responsive to such requests. In addition, the informal process was fully open to all parties. Finally, we would note that participation in the collaborative was voluntary and had the collaborative process been unsuccessful the parties would have been provided with a full opportunity to present their views on the issues through a formal litigation process.

Finally, we find that the result of the Stipulation is reasonable, fair and consistent with the public interest. In deciding whether a stipulation before us is fair and consistent with the public interest, the entire Stipulation must be considered as a package. Whether we disagree with a particular provision or whether we would have come up with a different overall result were we deciding the case after litigation is not the question. The question is whether the particular proposal is reasonable and consistent with the public interest. See *Central Maine Power Company, Request for Alternative Rate Plan (Post Merger) "ARP 2000"*, Docket No. 99-666, Order Approving Stipulation at 13 (Nov. 16, 2000).

We have reviewed the return on equity utilized in the revenue requirement calculation and find it to be within the range of what we would consider to be reasonable. While we may have decided individual expense or rate base issues differently, had this case been fully litigated, as discussed above, this is not the question before us here. As an entire package, we find that the Stipulation appropriately balances the interests of the Company's ratepayers and shareholders and, given current facts and circumstances, produces just and reasonable rates. Therefore, we conclude that the Stipulation is also consistent with all relevant legislative mandates.

## V. ORDERS

In our Part One Order we approved the Stipulation and authorized the Company to enter the proposed Hedge Program. We now enter the following delegation orders for approval of the Company's filings made in compliance with our Part One Order:

1) The Director of Finance is delegated authority to review and approve the Company's Hedge Program filing in compliance with our Part One Order. In addition, the Director of Finance is delegated authority to enter and approve such accounting orders as are necessary and appropriate in compliance with our Part One Order.

2) The Director of Technical Analysis Division is delegated authority to approve rates filed by the Company in compliance with our Part One Order.

Dated at Augusta, Maine, this 25<sup>th</sup> day of September, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.